



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.09.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.[MD].No.378 of 2018

P.Christy Valarmathi

: Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by the Principal Secretary to Government,
The Social Defense Department,
Fort.St.George, Chennai.
2. The District Collector,
Office of the District Collector,
Pudukkottai District.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Pudukkottai District.
4. The Chairperson,
The Child Welfare Committee,
Maraimalai Nagar, Pudukkottai District.
5. The District Child Protection Unit,
Kalyanaram Puram,
Ex-Army Quarters, Thirukokaram Post,
Pudukkottai District.
6. Sekar,
Dharma Integrated Child Campus,
Avataiya Patty, Aranthangi Main Road,
Vallathirankottai via,
Pudukkottai District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the respondents to produce the detenus, by name, Sharmila, aged about 11 years, Katrin, aged about 11 years, Nancy, aged about 9 years and Thalapathy, aged about 6 years, now under the custody of the respondent Nos.3, 4 and 5, before this Court and hand over the custody of detenus under Model Guidelines for Foster Care, 2015 to the petitioner and set them at liberty.



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For Petitioner : Mr.R.Alagumani
For Respondents 1to3 : Mr.K.Dinesh Babu
Additional Public Prosecutor
For Respondents 4&5 : No Appearance
For Respondent No.6 : Mrs.R.Ramya
For Mr.C.Meenakshi Ramaprabhu

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

Strangely, the present Habeas Corpus Petition has been filed by a Home, which is unregistered and unlicensed, seeking custody of the children, who were under its custody on an earlier point of time, till they were taken away and put under the custody of the sixth respondent by the Child Welfare Committee.

2. Mr.R.Alagumani, learned counsel appearing for the petitioner, would submit that insofar as the minor girl - Sharmila is concerned, she may be permitted to go with the mother, who is a natural guardian.

3. The learned Additional Public Prosecutor would submit that the question as to whether the person, who claims to be the mother of the minor girl - Sharmila, is the actual mother or not itself, is in dispute. He would further submit that the alleged mother has not produced any document in support of her claim and the child herself is not comfortable with her.

4. Though the learned counsel appearing for the petitioner seeks to produce Aadhar Card, we are not inclined to take into consideration of the same, as it is for the Child Welfare Committee concerned to consider it from the point of view of the minor child as to whether she is comfortable with the alleged mother or not. This is in the event of the alleged mother proving that she is the mother of the child. It is well open to the Child Welfare Committee to conduct DNA test, if it is so required. We are of the view that it is not known as to why the mother of the minor child did not come forward to take care of the child till the petitioner approaches this Court and files this Habeas Corpus Petition. Therefore, it appears that there is something going on between the petitioner and the alleged mother of the minor child. Even today, the alleged mother is not present in Court. Hence, we leave it open to the wisdom of the Child Welfare Committee to decide the issue.

5. Insofar as the other minor children are concerned, they have been in the custody of the sixth respondent herein for more than an year and the children are comfortable with the sixth respondent. Merely because the children were brought under the custody of the petitioner Home, which runs an unlicensed Home, when they were minor, on an earlier point of time, no right could be created in its favour. The children cannot be treated like properties. The interest

and welfare of the children are the paramount consideration of this Court. As the children are comfortable with the sixth respondent, we are not inclined to issue any direction as prayed for by the petitioner.

6. In the light of the above discussion, the Habeas Corpus Petition stands disposed of, making it clear that this order will not stand in the way of the petitioner from approaching the authorities concerned to get appropriate license.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Principal Secretary to Government of Tamil Nadu,
Social Defense Department,
Fort.St.George, Chennai.
2. The District Collector,
Office of the District Collector,
Pudukkottai District.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Pudukkottai District.
4. The Chairperson,
The Child Welfare Committee,
Maraimalai Nagar, Pudukkottai District.
5. The District Child Protection Unit,
Kalyanaram Puram,
Ex-Army Quarters, Thirukokaram Post,
Pudukkottai District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.C.MEENAKSHI RAMAPRABU, ADVOCATE IN SR No. 83312
+ 1 CC TO Mr.R.ALAGUMANI, ADVOCATE IN SR No. 83630

NB

TE/SKN/SAR-1 : 27/09/2018 : 3P/9C

ORDER MADE IN
H.C.P.[MD].No.378 of 2018
07.09.2018